2-03 Exam MEE Question 2 - Sample Answer # 1

1. Financier has no rights against Mariner because Mariner has a valid defense - failure of consideration.

The holder of a note has the rights of the person who transferred the note to them - unless they are a holder in due course (HDC) - and takes the note subject to personal defenses (again . . . unless they are a HDC). To be a HDC holder must take a negotiable instrument, properly negotiated, in good faith for value without notice of claims to the note or defenses acting against the note.

Financier took a negotiable instrument (given in facts) properly negotiated - because this was order paper signed and delivered. However, Financier took the note after March 1, 2002 and subsequently with notice that it was past due. Financier couldn't therefore be a HDC. Between Mariner and Financier Mariner may raise the defense of failure of consideration for the promise. Financier has no rights against that claim, the fact that he paid value $3,500 is moot.

2. Financier has rights under a warranty of transfer against Chandler. Whenever a note is indorsed "without recourse" the taker accepts they cannot present the note to indorser for payment. However, they may claim the value of the note if indorser breaches an implied warranty of transfer. The warranty of right to enforce is made by the promisee if they transfer the note. Subsequent takers may sue for breach if promisee did not have a right to payment on the note.

Here, Financier may sue Chandler for breach of the warranty of right to enforce for the amount Financier paid $3,500.

3. Mariner has no rights against Trawler for recovery of the nets, because Trawler is a Bona fide Purchaser (BFP).

If a person entrusts goods to a merchant, of the type of goods entrusted, and the merchant sells the goods to a 3rd party in good faith and without notice that the merchant had no right to the property - the property may not be recovered. The 3rd party is considered a BFP in the ordinary course of the merchants business. A BFP is not liable even to the true owner.

Here, Trawler didn't have notice of Mariners claims. Trawler was shopping for nets from a merchant of nets. Trawler qualifies and is takes free from any claims.

2-03 Exam MEE Question 2 - Sample Answer # 2

1. Financier may not force Mariner to pass the note because Financier is not a holder in due course of a properly negotiated negotiable instrument. To be a negotiable instrument, the instrument must contain an unconditional promise or order to pay a fixed amount of money on demand or at a fixed time to order or to bearer and not contain any unauthorized undertakings.

In this case, the promissory note is a negotiable instrument because Mariner unconditionally promised to pay Chandler (to the order) a fixed amount of money ($4,000) at a definite time (45 days) and the note contained no other unauthorized undertakings. Chandler negotiated the note by properly signing (indorsing) the note and delivering it to Financier (both required because payable to order of Chandler).

Financier is a holder because he is in possession of an instrument containing all necessary indorsements (that of Chandler, the payee) Financier is not a holder in due course, however, because although he gave value for the note ($3500 sufficient even though not full $4000); and he took in good faith (both honesty in fact and commercial reasonableness required and no facts to indicate otherwise); he took with notice that the note was overdue because the note was due on March 1and Chandler delivered the note to Financier on March 10. Therefore, Financier took the note with constructive notice that note was overdue and Financier is not a holder in due course he takes subject to Mariner's personal defense that the net were never returned to Mariner by Chandler.

2. Chandler indorsed the note to Financier. Generally, indorsers are secondarily or conditionally liable to their indorsees. That liability can be contractual and require presentment, dishonor and notice of dishonor, but Chandler negated that contractual liability by indorsing to Financier "without recourse." But Financier can sue Chandler for breach of transfer warranties (right to enforce; signature genuine; no alterations; no defenses against transferors and no knowledge that maker insolvent). In this case, Chandler breached the transfer warranty because he had no right to enforce the note because it was already overdue, and Mariner had the defense that Chandler never returned the nets.

3. None. Trawler is a bona fide purchaser of goods entrusted with a merchant selling goods of the kind. Trawler is bona fide purchaser because he gave value and took without notice that Chandler had no rights in the nets. Chandler is a merchant selling goods of the kind (fishing nets) so his bona fide purchaser of Mariner's nets (Trawler) takes free of Mariner's claim to the nets.

2-03 Exam MEE 2 Sample Answer #3

(1.) This is a commercial paper question governed by the UCC (Article 2). The first question is whether the promissory note F is trying to enforce against M is a negotiable instrument.

Step 1: A negotiable instrument is a written agreement to pay a fixed amount of money at a reasonably certain time to bearer or on demand (e.g. "to the order"). Here M is the "maker" of the note and C is the "payee." The note is for a fixed amount ($4,000) to be paid at a fixed time (March 1, 2002) (note that even if there had been interest, an acceleration clause, or a possible extension to a later fixed date it would still meet the reasonably certain time requirement). It is order paper b/c it is "to the order" of C.

Step 2: The next step is to determine whether the note was negotiated by C to F such that F becomes a "holder." To negotiate order paper, it must be (i) endorsed and (ii) possession must be transferred. C properly endorsed the note, and he endorsed it "in blank." When C gave the note to F, it was properly negotiated (as may be indicated by the facts).

Step 3: Is F a "holder in due course" (HDC). A HDC is one that takes a note (i) in good faith, (ii) for value and (iii) without notice of any defenses or that the note is past due/in default or that the maker is insolvent. Here, although F gave value (buying at a discount does not destroy "value" so long as the agreed-to amount is paid) and did so in good faith, F is not an HDC. The note was past due on its face and thus F does not meet the requirements for HDC status. F is just a holder.

Step 4: An HDC takes the note free of any "personal defenses" such as breach of contract. An HDC is subject only to "real defenses" (e.g.: forgery, fraud in the factum, alteration, etc.). Because F is only a holder, M can assert the personal defense of breach of contract against F. Therefore, F has "rights" against M only subject to this defense (and will likely not be able to enforce the note.)

(2.) F, as a transferee, of a negotiable instrument has rights against C (the transferor).

First, as a preliminary matter, F does not have any rights against C as an indorser of the note. Ordinarily, an indorser of a note will be secondarily liable to the holder if the maker fails to pay. (After presentment is made to the maker, the note is dishonored, and the indorser is given notice of the dishonor.) Here, by endorsing "without recourse," C cut off his liability as an indorser.

But, C is liable for breaching a transfer warranty. Whenever a note is negotiated, the transferor warrants that (i) all the necessary signatures are valid, (ii) there has been no alteration, (iii) that the transferor is entitled to enforce the note, and (iv) a couple other things. Here, C breach transfer warranty "(iii)" because he was not entitled to enforce the note against M because C breached the contract to repair & return the net to M, which would be a valid oral agreement. Thus, because of the breach of the transfer warranty, C would be liable on the note to F.

(3.) Mariner has no rights against T for recovery of the nets. T purchased the nets from one who in his ordinary course of business sells items like the one purchased (i.e. from C). Thus T takes free and clear of any interest that M had in the nets.

2-03 Exam MEE 3 - Sample Answer #1

1. Pursuant to RSMO §452.377, a motion to modify in a relocation case requires a showing by the movant that circumstances have "substantially changed" and that the change is "continuing" in a way that demands the decree and specifically the parenting plan be modified.

In this case, Paul's motion meets the general requirement of a showing of a substantial and continuing change. However, the Court will consider several factors in deciding whether or not to grant the motion. The factors include: 1. What is in the best interest of the child, 2. If the continuing change requires a change for custody, 3. Which parent is more likely to provide "frequent and meaningful contact," 4. Abuse or neglect allegations and 5. What the child wants to do, if age appropriate, through an in camera interview.

In this case, Paul's life change does not render a custody change from joint to sole proper. Missouri law prefers joint custody pursuant to public policy that children need frequent and meaningful contact with both parents.

2. In this case, procedurally, the proper notice and answer to the motion to modify have been filed. For (3) three years the parents have been participating in a week on/week off plan without problems. Under 452.377 Paul's motion should be denied absent a showing stronger than his "educational and cultural" argument. Chris was born in Missouri and has spent his entire life here. From the facts Paul cannot make a showing that Washington is a better place for Chris to grow up, or that a move is in his best interest.

The Court must take a common sense approach and factor in what Chris' wishes are. The Court could modify the parenting plan to change visitation if Paul decides to go anyway.

3. Missouri law pursuant to RSMO 452.402 provides for grandparent visitation if it is in the best interests of the child and after a divorce or a death of one of the child's parents visitation has been unreasonably denied for at least 90 days.

The intervention is proper and the Court should consider the relationship Chris has had with Grandma Mary and Grandpa Perry. The denial of their visitation with Chris recently serves as evidence that Rachel and Chris, absent a court order will not allow for frequent and meaningful contact to continue. The relationship between Chris and his Grandparents, as indicated in the facts, should continue because it has been this way since Chris was born. Absent a showing of a good reason to exclude them, Chris should be allowed visitation with his grandparents.

4. Paul or Rachel may raise a constitutional argument, however, they will not succeed.

The constitutional argument is one founded on the theory that grandparents lack standing as a right with regard to visitation. However, the most recent Missouri case, Blakely v. Blakely, the 8th Circuit held that 452.402 of the Revised Statutes of Missouri was constitutional. Also, the Missouri legislature, effective January 1, 2003, added language to insure its validity and constitutionality.

Missouri public policy and statutory authority will render Paul and Rachel unsuccessful, because Grandma and Grandpa as residents who have been unreasonably denied visitation for 90 days have standing.

2-03 Exam MEE 3 - Sample Answer #2

1. The court will look to the changed circumstances of the legal custodian-physical. Because Chris resides with both parents, presumably it will look to both parents' situation. The court will look mostly to the best interest of the child. The same factors should be used when deciding custody initially, because those would be more prevalent here (w/joint physical custody) - wishes of each parent, wishes of child, physical/mental state of parent, parent willing to keep other parent in continuing relationship, parent most likely to get along and intent to relocate. While changing custody usually requires a reason why the physical custodian is no longer able or unwilling or unsuited for child's needs. This situation is unique as neither are unfit or unwilling.

2. The court will review whether the relocation is being attempted in good faith. It will also decide if the reason for relocation is voluntary or involuntary. Voluntary relocation without other parent's consent is not seen as in the child's best interest. In this particular situation, the court may also look at Rachel's reasoning for blocking the relocation, as she is also a physical custodian. She is attempting to block the relocation because she cannot move, the court should determine this is in the child's best interest. Paul on the other hand, could stay or leave. The motivating factors will be reviewed by the judge and if educational & cultural opportunities are better determinative factor for this child, it will also play a role. Wendy's lucrative salary will not be an issue in either relocation nor change of custody. Financial concerns will not be taken into consideration – not to mention that she would not be obligated to support him as his Stepmother.

3. Court should permit Mary & Perry to intervene. The Court will review the relationship, the desire of the child and the grandparents to see each other. Whether or not a bond has been made between them and ultimately, whether or not it would be in the child's best interest. Here, there is no doubt, the relationship is beneficial to the child. The grandparents have a statutory right to petition for visitation in MO. Their relationship will not be a factor in the relocation though, simply to determine visitation privileges.

4. The Troxell case decided by the US Supreme Court declared grandparents rights do not have to be permitted by a parent not wanting to allow them. This was as the result of a Washington statute which permitted visitation rights to nearly anyone who petitioned. The statute was struck down as violating a parent's right to privacy to raise a child how he/she sees fit – a fundamental right.

However, the MO Supreme Court recently decided the MO Grandparent Visitation Statute was constitutional in light of the Troxell decision. Therefore, the constitutional challenges will not be successful. MO's statute has been held narrow enough to not be held in conflict with Troxell.

2-03 Exam MEE 3 - Sample Answer #3

1. In determining whether to modify a custody arrangement, the court will determine whether there have been changed circumstances. This is a relatively hard standard to overcome, and usually is only granted when there has been a material change in circumstances regarding the custodial parent and the child, a breakdown in joint custody, or something else of this nature. When determining custody interests, the court will additionally apply the best interest test, which discusses six factors in reference to what would be in the best interests of the child. The six factors include: 1) The child's wishes, 2)the parent's wishes, 3)the mental and physical health of the children/parents – all parties, 4) any intent to relocate, 5) the need for a continuing relationship with both parents, and 6) a preference for the "friendly parent," as well as all other relevant factors.

2. In determining whether to allow Paul to relocate to Washington State with Chris, the court will consider whether or not the move is in good faith, as well as what effect this move will have on the custodial and child support arrangements currently in place. Further, b/c the move to Washington necessarily affects who has custody Chris, the court will again consider the above-listed best interest factors, as well as all other relevant evidence. If the court determines that the move is premised on a desire to remove the child from the state or to make custody difficult, the court will deny the relocation.

3. MO has much broader visitation rights than most other states, especially regarding grandparent visitation. MO's law has continued to allow broad visitation rights, and has remained unaltered by Troxel. In MO, grandparents can petition for visitation rights if they are denied visitation for 90 days or more, and if one of the parents dies, and the remaining parent makes it difficult/impossible for the grandparent's to see the child. On these facts, if Paul and Rachel deny Grandma and Grandpa visitation for 90 days consecutively, they would be able to petition the court for visitation. (However, it should be noted that if the grandparents were contesting the move in general, they would not have standing b/c only the other custodial parent has standing to challenge the move.) In determining whether to allow the grandparent's specific visitation, they would consider the grandparent's past relationship to the child, the nature of that relationship, the length of the relationship, the parent's reasons for deny specific visitation, and the grandparent's reasons for desiring specific visitation.

4. Paul and Rachel could argue that MO's grandparent visitation statute violates their right to privacy. Usually rights re: family are found under the constitutional right to privacy, and Rachel and Paul then would argue that they are entitled to raise their family in the way that they choose to, including denying grandparent visitation if they see fit. Additionally Paul and Rachel could argue that the statute violates their due process rights. They could argue that they have an entitlement to raise their family as they see fit, and that that entitlement is being taken away by allowing grandparent visitation. It is unlikely that these arguments will be successful, in light of the fact that the Troxel decision came down a few years ago, and the MO grandparent statute remains unaltered by that decision.

2-03 Exam MEE 4 - Sample Answer #1

Tenant should argue that Lessor is liable for Handy's negligence on the theory that Handy is Lessor's employee who acted in the scope of his employment when installing the outlet. The likely out come of such claim is that it would prevail.

Tenant should also argue that Lessor is liable for the damages because Handy as, Lessor's agent entered into a contract with Tenant for the repairs and breached such contract by failing to properly install the outlet. The likely outcome of such theory is that a valid contract exist between Lessor and Tenant for installing the outlet and Tenant will receive contract damages for breaching the contract by failing to perform.

EMPLOYEE/SCOPE OF EMPLOYMENT

An employer is vicariously liable for the negligence of his employee if the employee was acting in the scope of his employment.

The first issue is whether Handy was Lessor's employee or an independent contractor. Factors to consider are: 1. How was the person denominated (employee? or independent contractor?); 2. How was the person paid? (Was it a weekly or monthly salary or was it per assignment?); 3. Did the "employee"provide his own tools which is normally an indication of being an independent contractor; and 4. How much control did the employer exert over the person. The more control, the more likely they are an employee.

Here, Lessor and Handy contracted for an indefinite time which favors find employee status. Handy is paid per hour for the work he does pursuant to the contract which would favor an independent contractor finding. Handy provides his own tools which favors an independent contractor finding; however, the most important factor is control and, here, Lessor had a lot of control over Handy. Handy had to contact and obtain Lessor's approval before performing repairs and Lessor limited the type of work Handy could perform. On balance, a finding of employee status is appropriate.

Whether Handy was acting in the scope of his employments is determined by focusing on whether the type of work he was conducting was of the type he performed for the employer, whether he was performing these duties while on the job for the employer and if he was seeking to advance the employer's goals.

Here, the electrical work was forbidden pursuant to the contract but it was repair work which is a type of work Handy did perform. Handy was at the tenants apartment because he was there to perform authorized repair work so its in the same time frame, and although Handy took the money for himself by doing work for Lessor's Tenant, he was pleasing Lessor's tenant which would probably be one of Lessor's goals. Accordingly, Handy was Lessor's employer acting w/in the scope of his employment and Lessor would be liable for the negligence.

CONTRACT

At issue is whether Handy had authority to enter a contract for the outlet repair with Tenant on behalf of Lessor?

A principal-agent relationship is consensual and contractual. Here, Handy and Lessor consensually entered a contracted whereby Handy would act for Lessor in making repairs. Nothing suggests Lessor

did not have the contractual capacity necessary for a principal to make such a contract.

An agent's authority may be either Actual, Apparent or Ratified. Actual authority can be express or implied.

Here, there is nothing to indicate that Handy had express or implied actual authority to enter this contract with Tenant. Indeed, the contract expressly calls for Handy not to do such work.

Apparent authority exists when a principal cloaks an agent with the appearance of authority and the third party reasonably relies on such appearance.

Here, the tenants were expressly told by Lessor to make requests for repairs through a telephone number listed as "Lessor's Repair Line" yet the calls actually transferred to Handy at his business. Lessor limited Handy's authority by requiring Handy get authorization from Lessor, not perform work on the side for tenants, and not perform any electrical work; however, nothing in the facts indicate Tenant knew of these limitations. Therefore, it appears Lessor did cloak Handy with the appearance of Authority.

Whether Tenant reasonably relied on such appearance is questionable only on the fact that Handy told Tenant the installation of the outlet was not a repair covered by the lease. This information, however, appears only to go to the fact of whether repairs would be free (i.e. only repairs covered by the lease are free) and not whether they would be considered as being done on Lessor's behalf. Indeed, Tenant believed the $200 charge would go to Lessor.

On balance it appears that Tenant reasonably relied on the appearance of authority; therefore, there will be a valid contract for the repairs and Lessor will be bound to such contract. Tenant may hold Lessor vicariously liable for the agent's breach of the contract and any damages caused by the breach to perform.

2-03 Exam MEE 4 - Sample Answer #2

Theory 1: Respondeat Superior

T could argue that H was L's employee and that, accordingly, L is liable for the damage. Generally, an employer is vicariously liable for any torts committed by an employee withing the scope of employment – this is respondeat superior.

Determining the likely outcome requires answering two subsidiary issues. First, was H Lessor's employee or was H an independent contractor?

The facts here tip in favor of finding that H is an employee. Courts will ignore or look past formal titles or lack thereof when determining whether one is a employee or independent contractor – they look to the nature of the relationship. An independent contractor is characterized by a short engagement, a discrete task, use of own tools, and by autonomy in carrying out the task. An employee is characterized by long, general engagements and the employers control of how tasks are performed. Here, the factors seem to weigh in favor of H being an employee – he had to consult w/L before working, he had an indefinite agreement (i.e. no discrete task). (The only factor in favor of i.c. is H used his own tools). Control is probably the most important, so H will be an employee.

The next step is to determine whether H was acting in the scope of employment. This is a close call. H's contract specifically prohibits him from doing electrical work, suggesting that this was outside the scope of employment. However, employers are usually not vicariously liable only where there has been a gross departure from the scope of employment ("frolic & detour"). To the extent that H was still acting in the interests of L, H was not on a f&d. However, b/c H accepted money on the side (also prohibited by the agreement) a court would probably find that H deviated from the course of employment (based on the two contractual prohibitions). (T may have some sort of estoppel/reliance argument, but that's better saved for agency – see below)

> NOTE: Even if H were considered an independent contractor, L could be liable if H was engaged in an inherently dangerous activity. (Electrical wiring probably would not count.)

Theory 2: Direct Negligence

T could also bring a direct negligence claim against L based on L's negligent hiring of H. This theory seems doomed to fail.

Theory 3: Agency

T could claim that H was L's agent. A principal (L) is liable for torts committed by an agent w/in the scope of the agency.

An agency relation can be created by agreement, but these facts do not support that. Here, T would have to argue that H had apparent authority and that, therefore, L is estopped from denying the agency.

Here, H did seem to have apparent authority: (i) "Lessor's Repair Line" was H's number and (ii) L apparently did nothing to put T on notice that H was not L's agent. T was, therefore, entitled to rely on H apparent authority and L will be vicariously liable to T. This theory seems to be the most promising.

2-03 Exam MEE 4 - Sample Answer #3

Tenant (T) can argue that Lessor (L) is vicariously liable for Handy's (H) actions under the doctrine of respondent superior. Respondent superior requires that the agent be a servant of the principal/master, rather than an independent contractor. Several factors present here indicate that H was a servant rather than an independent contractor. Most important is that L could exert a great deal of control over H. H was obligated to investigate any calls from tenants, he was required to seek L's approval before making any repairs, and if approved, H was required by L to make the repairs w/in 24 hours. Also, Payments made to L, who is then responsible for paying H. Also, L limited the type of work H could perform (i.e. no electrical work) & any subcontracting must be approved by L. Also indicating a master/servant relationship is that L & H's contract was for an indefinite period.

L can argue that other factors, such as H responsible for providing his own tools, or that he ran his own business, suggest that H is an independent contractor. However, a balancing of all the factors suggests a master/servant relationship.

A master is responsible for any tortious acts committed by the servant in the scope of his employment. L can argue that electrical work and work "on the side" for L's tenants was outside the scope of H's employment, as expressly stated in L & H's K. T will argue that H was w/in the scope of employment. A factors that indicate there is the similarity b/w H's duties & the job actually performed. H's job called for small household repairs and maintenance. T could argue that installation of an outlet is similar enough to be w/in the scope of H's employment. As state above, L will argue that this is not in the scope of employment b/c it is contrary to the express terms of the K. L's argument will likely fail.

As a result, L would probably be liable under respondent superior.

T can also argue that L is liable for the actions of H under a theory of apparent agency. A principle is liable for the actions of his agent if the principle made manifestations to a 3rd party and it was reasonable for that 3rd party to rely on those manifestations. In support of this, T will argue that H's number was actually listed as "L's Repair Line." T will also argue that he believed his payment was going to L (which was how L set up L & H's payment arrangement). In light of these manifestations made by L, it would be reasonable for T to believe H was L's agent. As such, L is liable under a theory of apparent agency.

2-03 Exam MEE 5 - Sample Answer #1

1. Yes the Federal Court properly granted summary judgment. A motion for summary judgment should be granted when the moving party establishes that there is no issue of material fact in dispute and as a matter of law the moving party is entitled to prevail. Once the moving party meets that initial burden, the nonmoving party must set forth a genuine dispute of material fact which precludes summary judgment. Each party needs to support their factual cites with citation to the record or affidavits.

In this case Acme supported its motion with affidavits attesting to the fact that a proper warning label had been affixed to the Widget both at the time of delivery to widgets and at the time of distribution to the retailer. Acme, as the manufacturer discharges his duty under the state law if the warning is affixed at the point of delivery to its distributer, in this case Widgets so it has met its initial burden.

Plaintiff attaches her own affidavit indicating no warning was affixed when she purchased her Widget from the local retailer; however, this fact does not address whether the warning was affixed when it was delivered to Widget which is what is relevant for Acme's liability. Since Plaintiff did not establish a genuine dispute of material fact. The federal court properly granted summary judgment in favor of Acme.

2. CLAIM PRECLUSION

At issue is the propriety of collateral estoppel and res judicata.

Res judicata, claim preclusion, applies when the parties to the earlier suit and the current suit are the same or in privity, the same claim is involved in both lawsuits, and there was a final decision on the merits.

In this case, although the grant of summary judgment in favor of Acme on the failure to warn claim is a final judgment on the merits, it is not actually the same claim asserted in the case against Widget. The Widget case turns upon whether the warning was affixed when delivered to the retailer not whether it was affixed when delivered to the distributer. Further, it is doubtful Widget and Acme are in privity. Accordingly claim preclusion will not apply in this case for the failure to warn claim.

The sale of a dangerously defective product was not decided by the federal court; rather, it was settled amongst the parties so there was no final order on the merits. Accordingly, no claim preclusion should be applied for this claim.

ISSUE PRECLUSION

Issue preclusion applies when the parties are the same (or in privity), the issue was actually litigated and there was a final judgment on the merits.

Here, as discussed briefly in the claim preclusion issue, the failure to warn claim against Acme turned upon a different issue than would against Widget. The issue of whether the label was affixed to the Widget when delivered to the retailer was not necessary to the judgment for Acme. Therefore, the issue was not actually litigated (despite plaintiff raising the issue in her affidavit, and it was not a necessary part of the final judgment in Acme's case. Therefore no issue preclusion will apply.

Issue preclusion will not apply to the sale issue because as discussed above, there was no final judgment on the merits.

2-03 Exam MEE 5 - Sample Answer #2

1. Yes. A summary judgment motion should be granted when the movant's motion and the non-movant's response show that there is a genuine issue regarding material facts and those material facts give the movant the right to prevail as a matter of law.

In this case, under the applicable state law, a manufacturer's duty to warn is fully discharged if a proper warning is affixed to the product at the point of delivery to its distributor. Acme attached proper affidavits of employees of both Acme and Widgets attesting that proper warning labels had been affixed to the Widget sold to Plaintiff at the time of delivery to Widget, the distributor (and at time of Widget's distribution to retailer). Plaintiff's response did not contradict those facts; the fact that no warning label was affixed to her Widget when she bought it from retailer is irrelevant under the statute. Therefore, there is no genuine dispute that a warning label was attached to the Widget when Acme delivered it to Widget, the distributor, and that fact gives Acme the right to win as a matter of law with regard to the failure to warn claim under applicable state law.

2. Collateral estoppel, issue preclusion, which acts to preclude a party from relitigating a claim litigated in a previous suit, is appropriate where (1) the issue in the instant claim is identical to an issue that was fully litigated and essential to the outcome in the first case; (2) a final judgment was entered on the issue in the first case; (3) the party to be estoppel from relitigating the issue was a party or in privity with a party to the first case; and (4) the party to be estopped had a full and fair opportunity to be heard in the first case.

With regard to the sale of a dangerously defective product claim, State Y's state court should not give preclusive effect to that claim because that claim was not litigated to a final judgment in the first case. Instead, Acme and Plaintiff settled that claim out of court. Res judicata, or claim preclusion prohibits a party from relitigating a claim that should have been brought in the first case. It requires that the parties in the case were parties or in privity with parties to the first case, the claim should have been brought in the first case because it arose from the same transaction or occurrence and the party to be estopped had a full and fair opportunity to be heard in the first case. Res Judicata is not appropriate in this case, for either of plaintiff's claims against Widgets, because Widgets was not a party to the first case and plaintiff was not compelled to join Widgets and assert its claims against Widget.

Turning back to collateral estoppel and focusing on Plaintiff 's failure to warn claim, the court should not preclude Plaintiff from relitigating that issue. The issue in Plaintiff's claim against Widgets is whether the warnings were attached to the Widgets when Acme delivered them to Widgets. At issue in this case is whether the warnings were attached when Widgets delivered them to the retailer. Thus, Plaintiff did not have the same incentive to litigate that collateral issue in the first case as she does the central issue in this case. Also, the warnings regarding the time of delivery from Widgets to retailer was not essential to the outcome of the first case. For those reasons, the court should not give preclusive effect to the federal court judgment against Plaintiff regarding Plaintiff's failure to warn claim against Acme in Plaintiff's failure to warn claim against Widgets.

2-03 Exam MEE 5 - Sample Answer #3

(1.) Yes. A motion for summary judgment (Rule 56) should be granted if there is no genuine dispute of material fact and the moving party is entitled to a judgment as a matter of law. A motion for summary judgment may be supported by affidavits, documents, depositions or any other discovery. In response, the non-moving party must do more than rely on the pleadings but must present evidence - again, by affidavit, documents, etc. – that demonstrate a dispute as to a material fact. In evaluating a MSJ, a federal district court looks at the evidence in the light most favorable to the non-moving party and draws all reasonable inferences in favor of the nonmoving party.

Here, under the applicable state law, a manufacturer's duty to warn is fully discharged if the warning is affixed when the product is delivered to the distributor. Acme presented evidence that such was the case here (by affidavits of A & W employees). In the face of this, plaintiff put forward evidence that there was no label when she got it from the retailer. She presented nothing related to whether there was a label at the distributor (and even if there was no label at the retailer, this does not support the inference that there was no label when A delivered to the distributor). Therefore, there is no dispute as to any material fact (i.e. label at distributor) and Acme is entitled to a judgment as a matter of law (under the statute).

2. No. Neither the failure to warn or dangerously defective product claims should be precluded.

Looking first at the settled claim (dangerous defect) is should be given neither claim preclusive nor issue preclusive effect. For there to be claim preclusion, there must be (i) identity of parties and (ii) there must have been a final decision on the merits after litigation. Here, there is neither identity of parties nor was there a final decision on the merits – the dangerous defect case was settled.

For there to be issue preclusion (collateral estoppel), there must be privity of the parties, the issue must have actually been litigated, and the issue must have been necessary to the outcome of the prior proceeding. Because the dangerous defect claim was settled, it fails the "actually litigated requirement."

Nor can the failure to warn claim be precluded. The key issue in Widget's case is whether the label was there when the product was delivered to the retailer. This fact is irrelevant to the dismissal of the case against Acme. In Acme's case the distributor was the important place in the chain of distribution. The issue of the retailer level was neither litigated nor was it necessary to Acme's successful motion. Therefore, Widget is out of luck.

(NOTE: Widget could use non-mutual issue preclusion to prevent relitigation of the distribution issue, although I'm not sure it would do them any good.)

2-03 Exam MEE 6 - Sample Answer #1

1. Yes, Susan is entitled to be paid 5,000 from the trust income because it is a payment for alimony.

At issue is whether a spendthrift clause in a trust can prevent an ex-spouse from receiving alimony.

Generally spendthrift clauses prohibit claims from the beneficiaries creditors; however, there is an exception for child support, federal taxes, and alimony (wife only).

Because Susan is seeking payment for alimony, the spendthrift clause does not prevent her claim.

2. No. Trustee may not pay the judgment from trust principal without violating his fiduciary duties.

At issue is whether a trustee can make payments of principal for the remainderman prior to their interest taking affect.

As the trust is established, only Adam has any current rights to payment from the trust. Beth has no current rights to payment. If the trustee makes such payment he will be violating his fiduciary duties to Adam because any diminishment of the principal will necessarily impair the income Adam will receive. Although there is no spendthrift clause applicable to Beth, this does not affect the fact that she is not yet entitled to any payments from the trust. The trustee is obligated to treat each beneficiary fairly, absent anything to the contrary in the trust. Any payment for this judgment would be unfair to Adam and have a preference for Beth.

3. Yes, the Court should terminate the trust and distribute the assets. Under Missouri law, a trust may be terminated if all the nondisabled adult beneficiaries consent and there would be no detriment to minor, unborn, unascertained, or disabled beneficiaries.

In this case all the named beneficiaries consent to the termination, namely Adam, Charity, and Beth. The only possible other beneficiaries would be the ones who would benefit from payments to Charity because, in order to be a valid charitable trust there must be a reasonably large number of unascertained beneficiaries. However, Charity will still be receiving a distribution even with the termination so there will be no detriment to unascertainable beneficiaries. Indeed, they will benefit because they will receive the funds now and not in 10 years. As there are no other beneficiaries to consider, the court may terminate the trust.

2-03 Exam MEE 6 - Sample Answer #2

1. At issue is the effect of a spendthrift clause on a trust.

A spendthrift clause is valid on a trust to the effect that it does not allow anyone to get at trust income or principal for the debts of the trust beneficiaries even if they have a judgment . An exception to this rule is that dependants with judgments can levy against the trust income.

Here Susan is Adam's ex-wife with a judgment for alimony that Adam had not paid. A former spouse qualifies as a dependant. The amount is less than annual income.

Therefore Susan could force Trustee to satisfy the judgment.

2. At issue is if a future beneficiary can access trust principal to which she will be entitled in the future.

A trust's principal cannot be raided at the request of the future recipient of the trust's principal.

Here Susan was the beneficiary of the principal of the trust, but to allow her to take part of the principal early it would reduce the income of Adam and Charity by decreasing interest earned on the trust principal.

Trustee cannot properly pay the $10,000 judgment to John even with a judgment because as discussed above in question 1 it has a spendthrift clause on it as well as it would go against purpose of settlor.

3. At issue is when a trust can be terminated.

A trust can be terminated if all the beneficiaries agree to terminate and all have capacity to make decisions. In MO a court can make a determination as to if it is in the best interest of beneficiaries who lack capacity.

Here Adam, Charity, and Beth all agree to terminate the Trust and no other beneficiaries exist. Although the trustee objects and it seems to go against the intent of the spendthrift trust set up by the decedant (to ration money to them over long period) it would probably be allowed. Note no beneficiary seems to lack capacity.

2-03 Exam MEE 6 - Sample Answer #3

1. Yes, Susan is entitled to alimony payments from the trust income despite the spendthrift clause.

Spendthrift clauses are valid in MO. The clause prohibits any assignment or attachment of the beneficiary's interest to any creditor. The creditor may only attach the income payable after it is distributed by the trustee. An exception is made for claims by a former spouse for alimony. This exception is based on public policy grounds and is designed to prevent destitution and forcing the state to pay for a former spouse when the other spouse has the means to provide support payments.

Because Susan is Adam's former spouse seeking unpaid alimony, Susan is entitled to attach Adam's interest in the trust despite the spendthrift clause. Susan can only have the trustee send her Adam's share and she is not entitled to the principal because Adam is not entitled to the principal.

2. No, the trustee cannot properly pay Beth's $10,000 tort judgment to John out of the principal. The trustee owes a fiduciary duty to Adam and Charity and diminishing the trust principal would adversely affect the rights of Adam & Charity in breach of that fiduciary relationship.

Also, Beth is not entitled to any trust property because her interest is not vested. Beth must wait at least 15 years from the trust creation before she is entitled to anything.

The Spendthrift Clause in Decedents' trust did not include Beth in its spendthrift provision. Therefore, John may get a future assignment of the trust principal to be paid to Beth. John, of course, would not receive any money until Beth was entitled to take.

3. Yes. Under MO law the court my terminate a trust early if all adult beneficiaries consent and the trust termination benefits any disabled, unascertained, minor, or unborn beneficiary. There is no need, under MO law, that the termination not contravene a material purpose of the settlor.

Here, the settlor is dead, and all adult beneficiaries consent to termination. There are no rights in unborn, unascertained, disabled, or minor beneficiaries. Instead of terminating the trust, however, the court may direct the Trustee, under the MO Trustee Powers Act, to reinvest the trust corpus. A $1 million dollar trust that only generates $5,000.00 per anum in income should be reinvested so the income beneficiaries receive a greater portion. Under the MO Prudent Investor Act, the trustee has a duty to diversify the trust assets to meet the needs of the beneficiaries.

2-03 Exam MEE 7 - Sample Answer #1

Stuart's estate should be able to recover the judgment from Corn Corp under a policy the corporate veil theory. Ordinarily, shareholders in a corporation are not personally liable for the debts of the corporation. Courts sometimes do, however, "pierce the corporate veil" and allow shareholder liability on corporate debts when the corporation acts as the alter ego of its shareholders or when all corporate formalities are disregarded. Courts are more likely to allow piercing in tort cases than in breach of contract cases because parties to a corporate contract have a greater degree of control over the bargains and risks. In a tort case, it is often times an innocent victim and courts more liberally allow veil piercing.

Here, GCI was formed with Corn Corp as its sole shareholder. GCI was under capitalized with only $6,000, just enough to allow its first crop of corn, and the directors and officers are the same as Corn Corp. These facts tend to show that GCI was really just the alter-ego of Corn Corp. Despite its good faith reason for setting up GCI (distinguishing its genetically manufactured product), the fact that Kathy knew the product was risky shows at least some intent by Corn Corp to shelter its liability behind the corporate veil of a subsidiary. Corn Corp is not allowed to do this without adequately capitalizing GCI or adequately insuring the risk.

GCI also failed to maintain many corporate formalities like separate books and records, which will show that Corn Corp treated GCI as if it was not a separate entity.

Most importatly, Stuart was the victim of a tort in which he did not have the opportunity to bargain for the risks and rewards. As previously noted, courts are more likely to pierce corporate veils to protect tort victims than victims of breach of contract. Stuart's estate will collect from Corn Corp., if it can.

The next issue is whether Stuart can pierce the Corn Corp veil and reach the personal assets of Kathy, Bruce and Alan. The same factors will apply and the court should probably conclude they should not pierce the Corn Corp veil. Corn Corp appears adequately capitalized and corporate formalities appear to have been followed. One possible grounds to pierce would be the negligence of Kathy, but as that is probably not enough in itself.

A court could equitably subordinate the Corn Corp to GCI loans so Corn Corp will have lower-priority claim to GCI assets than Stuart.

2-03 Exam MEE 7 - Sample Answer #2

As a general rule, the shareholders of a corporation are not personally liable for the debts and obligations of the corporation. The shareholders are liable only for the price they paid for the corporation's stock generally.

A court, however, will pierce the corporate veil, and allow a third party who is suing the corporation to also sue the shareholders personally if necessary to prevent fraud or unfairness. Courts usually pierce the corporate veil if (1) the corporation is merely an alter ego of the shareholder (s); (2) the shareholder (s) personally commingle money with the corporation's money; (3) the corporation does not comply sufficiently with corporate formalities; or (4) the shareholders undercapitalize the corporation such that the corporation cannot meet prospective liabilities and obligations.

In this case, the court will almost certainly allow Stuart to pierce the corporate veil and recover against Corn Corp, and it likely will not allow Stuart to pierce the corporate veil and recover against Corn Corp's shareholders.

Corn Corp - Extreme unfairness would result if Stuart could not recover against GSI's sole shareholder, Corn Corp. Corn Corp and its officers and directors incorporated GSI in order to sell and market a new, negligently tested strain of corn that was genetically engineered. That activity is very uncertain and it is very foreseeable that someone could be injured eating genetically engineered corn. Despite that (or perhaps because of that), Corn Corp, as sole shareholder of GSI, put capital into GSI only in the amount of $6000, woefully less than an amount necessary to cover prospective liabilities in this dangerous business activity; thus, GSI was undercapitalized. Also, Kathy failed to maintain any minute books for GSI, or any records of GSI's business transactions (as she did for Corn Corp); as such, it's fair to say GSI did not comply with corporate formalities and that GSI was merely an alter ego of Corn Corp. Also, use of similar names "super corn" and "super corn plus" indicates alter ego. In addition, Corn Corp often made informal "emergency loans" to GSI, which indicates commingling.

Because Stuart would suffer a great injustice if he were not allowed to recover from Corn Corp (because GSI is bankrupt) and because all of the usual circumstance in which courts usually allow a plaintiff to pierce the corporate veil are present in this case, the court should allow Stuart to recover from Corn Corp.

Corn Corp's Shareholders. The obvious problem with Stuart trying to recover from Corn Corp is that Corn Corp can no longer pay its bills. None of the usual circumstances (alter ego, commingling, lack of corporate formalities, undercapitalization) are in existence with regard to Corn Corp. Corn Corp. was capitalized with $500,000, which is probably sufficient given its activities. It kept meticulous records and minute books so no lack of corporate formalities. No evidence that Kathy; Alan or Bruce commingled personal funds with the corporation: No alter ego facts. As such, the court would not allow Stuart to pierce the corporate veil and recover against Kathy, Alan and Bruce unless it was necessary to prevent fraud or unfairness. Stuart's best hope given the non-existence of the usual circumstances in which court's allow veil piercing, is to argue that veil piercing, is necessary to prevent fraud or injustice. Stuart is not likely to be allowed to recover from Kathy, Alan and Bruce on these facts. If Corn Corp did the things GSI did (and GSI was never incorporated) causing Stuart's injury. Stuart likely wouldn't be allowed to pierce the corporate veil, so he shouldn't be allowed to just because Corn Corp set up a subsidiary and did the genetically engineering activity through that subsidiary.

2-03 Exam MEE 7 - Sample Answer #3

Stuart (s) will be able to recover against Corn Corp (CC), but not against CC's shareholders. CC is the sole owner of GCI. Generally, owners of a corp are not personally liable for the debts of the corp. However, a creditor or claimant, like S can "pierce the corporate veil" & hold owners personally liable in certain circumstances. A party can pierce the veil if the corp has inadequate capitalization. A corp has inadequate capitalization if it is likely that it will be unable to pay its debts as they come due. When GCI was incorporated, it had just enough capital to purchase seed for the 1st crop. This strongly indicates that it would be unable to pay its other debts as they come due & S could hold CC personally liable.

S can also attempt to pierce the veil & hold CC liable by showing that GCI failed to follow the required formalities of a corp. To protect against personal liability a corp must maintain certain formalities. These include the keeping of minutes, having annual shareholder meetings, & keeping records of business transactions. GCI did not keep minutes nor did it keep records of its business transactions. CC should be personally liable on these grounds, as well.

S can also attempt to hold CC liable under the alter ego theory. Alter ego theory states that owners of a corp will be personally liable if they fail to run the corp as a separate entity, but instead treat it as an extension of the owners. S can argue that liability under the alter ego theory is indicated by the fact that CC often made informal "emergency loans" to GCI, which amounted to a commingling of funds, that the sole directors of GCI were also the sole directors of CC, GCI operated out of the same offices as CC, & that GCI's product was marketed under the name "Super Corn Plus," while CC's product was marketed under the very similar name "Super Corn." All of these factors indicate that CC is personally liable under the alter ego theory of liability.

While CC is personally liable for the claims against GCI under several theories, the shareholders of CC will not be personally liable for the claims against CC.

The facts indicate that CC meet all the formal requirements of a corp. They maintained minutes & kept records of all business transactions. Its initial capital of $500,000 suggests that it was sufficiently capitalized. Nothing in the facts indicate that it is liable under an alter ego theory. As such, the shareholders of CC will not be subject to personal liability for the claims against CC.

However, Kathy may be liable under a tort theory b/c she introduced the corn into the market after negligently omitting several of the required tests. The other shareholders, Alan & Bruce, would not be liable b/c they were not aware of Kathy's actions. Furthermore, a corp, not its owners, is liable for the tortious acts of its employees if those acts were committed w/in the scope of employment.